

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

LONNIE BUTTS,

Plaintiff,

VS.

OFFICER BATES,

Defendant.

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Civil Action File No.
7 : 08-CV-7 (WLS)

RECOMMENDATION

Presently pending in this *pro se* prisoner 42 U.S.C. § 1983 action is plaintiff's motion to amend the complaint (doc. 19).

In this motion, plaintiff seeks to amend his complaint to add additional defendants. In his original complaint, plaintiff alleges that on January 4, 2008, while plaintiff was confined at Valdosta State Prison, defendant officer Bates physically and sexually assaulted him. Now, in this motion, plaintiff seeks to add additional individuals arising out of the same incident, as well as individuals from a prior event.

Plaintiff alleges that Officer McCloud was present during the alleged assault upon him by officer Bates, and failed to stop the assault or help plaintiff. Plaintiff alleges that Sgt. Hollis, a supervisor at the prison, refused to order that the handcuffs placed on plaintiff by Officer Bates be loosened, despite plaintiff's complaint that they were too tight. Plaintiff alleges that he received permanent damage as a result of the handcuffs being too tight for too long a time. Plaintiff alleges that Warden Darrell Hart at the prison, had prior knowledge that officer Bates had a history of violent attacks against inmates, and refused to fire Officer Bates despite his knowledge of Bates' propensity to attack inmates.

Plaintiff also alleges that in March of 2007, he reported to Lt. McDougle that Officer Watson was selling illegal drugs, including marijuana and cocaine, to inmates in the prison, which in turn caused the drug-affected inmates to steal plaintiff's belongings and otherwise created a dangerous environment in the prison. Lt. McDougle allegedly told plaintiff that he did not care what his officers did, but told him to file a grievance. Plaintiff alleges that Lt. McDougle took no further action.

Plaintiff is correct that he is given the right to file an amendment to his original complaint once as a matter of course prior to the filing of any responsive pleadings by the defendants under Rule 15 of the Federal Rules of Civil Procedure; however, defendant Bates filed his answer to the original complaint two days prior to plaintiff's filing of this motion to amend. At any rate, such amendments are still subject to the frivolity review pursuant to 28 U.S.C. § 1915(e)(2).

The undersigned finds that the new defendants who were allegedly involved in the January 4, 2008 incident, including OFFICER MCCLOUD, SERGEANT HOLLIS, AND WARDEN HART, all of whom were employed at Valdosta State Prison, should be joined in this action as party defendants. However, the undersigned further finds that the allegations against officer Watson and Lt. Dougle should NOT go forward, as that incident took place some nine months prior to the January 4, 2008 incident, and plaintiff has not shown how the two incidents are related. If he wishes, plaintiff may file a separate lawsuit against officer Watson and Lt. Dougle. Furthermore, the undersigned finds that the allegations against officer Watson and Lt. Dougle are too vague regarding the harm caused to plaintiff, and should not go forward accordingly.

Therefore, it is the RECOMMENDATION of the undersigned that plaintiff's motion to

amend his complaint be **GRANTED in part and DENIED in part** as stated above; that OFFICER MCCLOUD, SERGEANT HOLLIS, AND WARDEN HART be added to this action as party defendants, and that they be served with the original and amended complaint at Valdosta State Prison.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 4th day of December, 2009.

**S/ G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE**

msd